APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER
RAJAN, KAI

ART UNIT	PAPER NUMBER
3769	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

	Application No.	Applicant(s)
Office Action Summary	10/518,433	SCHULTE ET AL.
	Examiner	Art Unit	
	KAI RAJAN	3769	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE _3_ MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on _07 January 2009_.

2a) ☐ This action is **FINAL**.   2b) ☒ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) ☐ Claim(s) _1,9-11,14-18 and 21_ is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) ☐ Claim(s) _____ is/are allowed.

6) ☒ Claim(s) _1,9-11,14-18 and 21_ is/are rejected.

7) ☐ Claim(s) _____ is/are objected to.

8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) ☐ The specification is objected to by the Examiner.

10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a) ☐ All   b) ☐ Some * c) ☐ None of:

      1. ☐ Certified copies of the priority documents have been received.

      2. ☐ Certified copies of the priority documents have been received in Application No. _____.

      3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.

4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____

5) ☐ Notice of Informal Patent Application

6) ☐ Other: _____.

DETAILED ACTION

Examiner acknowledges the amendment filed January 7, 2009.

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in

37 CFR 1.17(e), was filed in this application after final rejection. Since this application is

eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e)

has been timely paid, the finality of the previous Office action has been withdrawn pursuant to

37 CFR 1.114. Applicant's submission filed on January 7, 2009 has been entered.

Note to Applicant Regarding Claim Interpretation

The terms "wherein," "for," and "in order to" in the claim(s) may be interpreted as

intended use. Intended use/functional language does not require that reference specifically teach

the intended use of the element. A recitation of the intended use of the claimed invention must

result in a structural difference between the claimed invention and the prior art in order to

patentably distinguish the claimed invention from the prior art. If the prior art structure is

capable of performing the intended use, then it meets the claim. The Examiner has placed the

word "for" in italics, see below, for those instances where this interpretation applies.

Claim Objections

Claim 1 is objected to because of the following informalities: In steps a) through m),

there is no step j). Furthermore, "[step] h" is missing a parenthesis, and should read "h)".

Appropriate correction is required.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or
any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and
requirements of this title.

Claim 1 is rejected under 35 U.S.C. 101 because the method steps produce no physical

transformation of matter or tangible result. In particular, there is no step disclosed for outputting

or displaying a human observable result.

Claim 11 is rejected under 35 U.S.C. 101 because a claim to software, program,

instructions, code, data structure, or a signal that does not recite a tangible computer readable

medium is non-statutory subject matter. See MPEP 2106 IV B 1 (a). It has been determined that

a "computer program" and "a stored set of data" are not sufficiently tangible.

Claim 11 is also rejected under 35 U.S.C. 101 because the claimed invention is directed

to non-statutory subject matter. Claim 11 positively recites limitations that overlap statutory

classes (See claim 11: "h) said output device further ***presenting*** test proposals . . .". In this case,

the applicant has positively recited a method and an apparatus in the same claim. See MPEP

2173.05(p) II.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 1 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In particular, the term "latest state of scientific knowledge" renders the claim indefinite, since one of ordinary skill in the art at the time the invention was made would be unable to ascertain the metes and bounds of the "latest state of scientific knowledge." Furthermore, the term "latest" is a relative term which renders the claim indefinite. The term is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1, 9 – 11, 14 – 18, and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Teitelbaum U.S. Patent No. 6,607,482, hereinafter '482 in view of Fey et al. U.S. PGPub No. 2002/0038227, hereinafter Fey.

Teitelbaum '482 discloses a method for recording and analyzing syndromes and their

causes and for establishing appropriate therapy proposals comprising:

a) preparing at least one set of anamnesis questions, wherein the anamnesis questions

include questions relating to the time and/or cause of the occurrence, the severity of, symptoms

and the environmental exposure of a patient, and storing this set in a data memory ('482 column

2 lines 28 – 46, column 6 lines 18 – 55),

b) preparing a set of data relating to the causes of diseases, including a listing of

allergens, and storing this set in a data memory, wherein the data is continuously revised and

extended, taking into account the latest state of scientific knowledge in allergology ('482 column

8 lines 22 – 41),

c) providing a computer program which selects and presents anamnesis questions

according to a predetermined set of rules ('482 column 7 lines 14 – 48),

d) recording the answers to the anamnesis questions, wherein within the framework of the

anamnesis questions preliminary information is recorded which includes at least the age and

gender of a patient and optionally one or more principal symptoms, affected organs and/or other

diagnosed illnesses, and wherein the answers are at least partly predetermined in discrete

selection steps ('482 column 5 lines 42 – 61, column 7 lines 14 – 48, column 9 lines 17 – 30,

figure 2),

e) awarding point values to at least some of the answers to anamnesis questions ('482

column 2 lines 28 – 46, column 6 lines 18 – 55),

f) adding an/or multiplying together the point values for specific answers or groups of
answers in order to create total point values for a group of answers and/or the entire anamnesis
('482 column 7 lines 63 - 67, column 8 lines 1 – 3),

g) creating a set of possible diagnoses using the criterion of whether the total point values
for specific groups of answers and/or the entire anamnesis exceed a predeterminable threshold
value and preparing a proposal for the allergens to be tested to further narrow down a the
diagnosis ('482 column 7 lines 56 - 67, column 8 lines 1 - 67, 9 lines 55 – 67, column 10 lines 1
– 5),

h preparing one or more diagnosis proposals ('482 column 7 lines 56 - 67, column 8 lines
1 - 67, 9 lines 55 – 67, column 10 lines 1 – 5),

i) preparing one or more therapy proposals, wherein steps e) to i) proceed
automatically under the control of an interactive computer program ('482 column 7 lines 56 - 67,
column 8 lines 1 - 67, 9 lines 55 – 67, column 10 lines 1 – 5),

k) preparing test proposals to further narrow the diagnosis proposals and therapy
proposals ('482 column 7 lines 49 – 55, figure 7 lab values),

l) providing a storage device in which all the data recorded from patients is supplied ('482
column 9 lines 9 – 16), and

Teitelbaum '482 discloses the system implemented as a computer program on a network
('482 column 9 lines 9 – 16). Teitelbaum fails to disclose data stored in anonymized form.
However, Fey a reference in an analogous art of health screening and diagnosis discloses a
networked medical database system that stores records in an anonymous manner (Fey paragraphs
0065, 0094). It would have been obvious to one of ordinary skill in the art at the time of the

invention to modify the networked system of Teitelbaum '482 with the anonymized medical

records of Fey, since Fey states that storing records in an anonymous manner protects personal

information from becoming public, and the user can benefit from medical advancements without

endangering privacy (Fey paragraphs 0065).

Furthermore, Teitelbaum '482 fails to disclose selecting comparable data based on a

user's answers. However, Fey a reference in an analogous art of health screening and diagnosis

discloses a networked health screening system that queries a database of a population for similar

trends and results (Fey paragraphs 0025, 0065, 0094). It would have been obvious to one of

ordinary skill in the art at the time of invention to modify the diagnosis system of Teitelbaum

'482 with the population database of Fey, since Fey states that having more current information

available to the medical community provides leaps forward in preventative care and early

intervention, and the population information can help better develop risk assessments (Fey

paragraph 0094), which is the heart of the Teitelbaum '482 invention.

9. A method according to Claim 1, wherein step g) includes the comparison of the

obtained set of answers with other sets of answers which have been obtained from earlier

anamneses (Fey paragraph 0025, 0094).

10. A method according to Claim 1, wherein contraindications are recorded prior to the

preparing of therapy proposals ('482 column 5 lines 42 – 61, column 7 lines 14 – 48, column 9

lines 17 – 30, figure 3).

11. A system for recording and analyzing syndromes and their causes and for establishing appropriate therapy proposals comprising

a) a data memory with a stored set of anamnesis questions, wherein the anamnesis questions include questions relating to the time and/or cause of the occurrence, the severity of symptoms and the environmental exposure of a patient ('482 column 2 lines 28 – 46, column 6 lines 18 – 55),

b) a stored set of data relating to causes of diseases, including pathogenic and/or allergenic substances, wherein the data is continuously revised and extended, taking into account the latest state of scientific knowledge in allergology ('482 column 8 lines 22 – 41),

c) a computer with a computer program which evaluates and presents anamnesis questions according to a predeterminable set of rules ('482 column 7 lines 14 – 48),

d) an input device for the inputting of patient data and answers to the anamnesis questions, wherein the answers are at least partly predetermined in discrete selection steps ('482 column 5 lines 42 – 61, column 7 lines 14 – 48, column 9 lines 17 – 30, figure 2),

e) a storage device for the inputted data ('482 column 9 lines 9 – 16),

f) a computer program which processes the inputted data for the purpose of creating proposals for allergens to be tested, one or more diagnoses and one or more therapy proposals, wherein point values are awarded to at least some of the answers to anamnesis questions and wherein the point values for specific answers or groups of answers are added and/or multiplied together in order to create total point values for a group of answers and/or the entire anamnesis ('482 column 5 lines 42 – 61, column 7 lines 14 – 48, column 9 lines 17 – 30, figure 2), and

g) an output device for the presentation of the questions, the diagnoses and/or

therapy proposals ('482 column 7 lines 56 - 67, column 8 lines 1 - 67, 9 lines 55 – 67, column 10

lines 1 – 5),

h) said output device further presenting test proposals for the allergens to be tested to

further narrow the diagnosis proposals and therapy proposals ('482 column 7 lines 49 – 55,

figure 7 lab values), and

i) wherein a storage device is provided in which all the data recorded from patients is

supplied ('482 column 9 lines 9 – 16).

Teitelbaum '482 discloses the system implemented as a computer program on a network

('482 column 9 lines 9 – 16). Teitelbaum fails to disclose data stored in anonymized form.

However, Fey a reference in an analogous art of health screening and diagnosis discloses a

networked medical database system that stores records in an anonymous manner (Fey paragraphs

0065, 0094). It would have been obvious to one of ordinary skill in the art at the time of the

invention to modify the networked system of Teitelbaum '482 with the anonymized medical

records of Fey, since Fey states that storing records in an anonymous manner protects personal

information from becoming public, and the user can benefit from medical advancements without

endangering privacy (Fey paragraphs 0065).

14. A system according to claim 11, wherein the storage device with anonymized patient

data is a storage device which is accessible to a specifiable circle of users ('482 Column 9 lines 9

– 16).

15. A system according to Claim 11, which has an access possibility to an allergen database (Column 9 lines 9 – 16 internet access provides "access possibility" to databases.

16. A system according to Claim 11, wherein the computer program in f) has a scale valuation and combination of the scale valuations of individual answers for the analysis of the recorded data ('482 column 2 lines 28 – 46, column 6 lines 18 – 55).

17. A system according to Claim 11, wherein the program in f) has a module which carries out a comparison with recorded anamnesis data available in the system for the analysis of the recorded data (Fey paragraphs 0025, 0065, 0094).

18. A method according to Claim 1, wherein contraindications are recorded prior to the preparing of therapy proposals within the framework of d) ('482 column 5 lines 42 – 61, column 7 lines 14 – 48, column 9 lines 17 – 30, figure 3).

21. A method according to Claim 1, wherein the computer program has a scale valuation and combination of the scale valuations of individual answers for the analysis of the recorded data ('482 column 2 lines 28 – 46, column 6 lines 18 – 55).

Response to Arguments

Applicant's arguments have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to KAI RAJAN whose telephone number is (571)272-3077. The examiner can normally be reached on Monday - Friday 9:00AM to 4:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry Johnson can be reached on 571-272-4768. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Kai Rajan/
Examiner, Art Unit 3769

/Michael C. Astorino/
Primary Examiner, Art Unit 3769

March 12, 2009